Miss Cunningham

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Am # 196

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
22 April 1948

UNITED STATES OF AMERICA VS AKIRA NOMOTO
UNITED STATES OF AMERICA VS GENICHI MUNEHIRO

Review of the Staff Judge Advocate

1. The attached record of trial of Akira Nomoto and Genichi Munehiro at Yokohama, Japan, from 25 June 1947 to 24 July 1947, by a Military Commission appointed by paragraph 21, Special Orders No. 143, Headquarters Eighth Army, United States Army, dated 20 June 1947, as amended by paragraph 1, Special Orders No. 146, same Headquarters, dated 24 June 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Akira Nomoto
AGE: 36
RESIDENCE: Ehime Pref., Higashi-ura-gun, Tanokuji-mura, Ageishi
MARITAL STATUS: Married
RELATIVES: Father, mother, sister, brother
EDUCATION: Middle school graduate (13 yrs)
VOCATION: Rayon company employee
MILITARY CAREER: Entered army 1 Dec 1932; returned home 30 Nov 1933; re-entered army 15 Jun 1939, serving until end of war; highest rank, captain

DATE OF CONFINEMENT: 26 Nov 1945
DATE OF ARRAIGNMENT: 25 Jun 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 25 Jun 1947 to 24 Jul 1947
DATE OF SENTENCE: 24 Jul 1947
SENTENCE: CHL for two (2) yrs
CLEMENCY RECOMMENDED BY COMMISSION: No

NAME: Genichi Munehiro
AGE: 27
RESIDENCE: Tokushima Pref., Miyoshi-gun, Sansho-mura, Nakano-sho, No. 1114
MARITAL STATUS: Married
RELATIVES: Father, 5 brothers, 3 sisters
EDUCATION: Grammar school graduate (8 yrs)
VOCATION: Grocery store employee
MILITARY CAREER: Entered army 10 Feb 1940 as 2d cl. pvt., stationed in Manchuria from 17 Feb 1940 to 20 Oct 1941; stationed in Japan to end of war; highest rank, corporal

DATE OF CONFINEMENT: 10 Dec 1946
DATE OF ARRAIGNMENT: 25 Jun 1947
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 25 Jun 1947 to 24 Jul 1947
DATE OF SENTENCE: 24 Jul 1947
SENTENCE: CHL for three (3) yrs
CLEMENCY RECOMMENDED BY COMMISSION: No

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2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency and Sentence:

Charges and Specifications:	Pleas	Findings	Legally Sustained
NOMOTO:			

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Ch: Accused at the times and places set forth in the specifications, and during a time of war between the United States and Japan did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: At divers times between 27 November 1942 and 19 July 1945, at the Fifth Branch Camp, aka Innoshima PW Camp, Hiroshima Area, Honshu, Japan, accused did willfully and unlawfully mistreat and torture numerous Allied PW's by beating them; by ordering and causing subordinates and others under his command and control to beat them; by forcing them to kneel for long periods of time and by otherwise abusing them.	NG	G, except the words "and torture", except the words "and others under his command and control", and except the words "and by otherwise abusing them." Of the excepted words, Not Guilty.	Yes
Sp 2: Between 27 November 1942 and 19 July 1945, at 5th Branch Camp, accused did unlawfully disregard and fail to discharge his duty as Camp Commander by failing to provide Allied PW's with proper, adequate and available clothing and with needed and available medicines and medical attention, thereby contributing to the serious illness and death of numerous Allied PW's.	NG	NG	---
Sp 3: That between 27 November 1942 and 19 July 1945 at 5th Branch Camp, accused did unlawfully mistreat numerous sick, diseased and physically unfit Allied PW's by forcing them to work when physically unfit to perform work; by depriving them of their full food rations and by otherwise abusing them.	NG	NG	---
Sp 4: At divers times between 27 November 1942 and 19 July 1945, at 5th Branch Camp, accused did willfully and unlawfully mistreat and abuse Allied PW's by withholding and otherwise misappropriating Red Cross food and supplies intended for the use and benefit of Allied PW's.	NG	NG	---
Sp 5: At divers times between 27 November 1942 and 19 July 1945, at 5th Branch Camp, accused did unlawfully disregard and fail to discharge his duty as Commander of said Camp to control and restrain members of his command and persons under his supervision and control, by permitting them to commit the following atrocities and other	NG	G, except the words "atrocities and other". Of the excepted words, Not Guilty.	Ye

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offenses against Allied PW's:

a. At divers times between 1 February 1943 and 19 July 1945, the unlawful mistreatment by one Munehiro, aka "Minnie", of Sgt. Albert W. Rowe, British PW, by beating him, by kicking him in the groin and by otherwise abusing him.	NG	G, except the words "at divers times" substituting therefor the words "on two occasions", and except the words "in the groin and by otherwise abusing him." Of the excepted words, NG; of the substituted words, Guilty.	Yes
b. At divers times between 1 February 1943 and 19 July 1945, the unlawful mistreatment by one Munehiro, aka "Minnie", of Pvt. Frederick J. D. Clemo, British PW, by beating and otherwise abusing him.	NG	G, except the words "at divers times", and except the words "and otherwise abusing him." Of the excepted words, NG.	Yes
c. In or about September 1944, the unlawful mistreatment by one Munehiro, aka "Minnie", of Pvt. Robert Ashton Hill, British PW, by beating him; by forcing him to work when ill and in an unfit physical condition for work and by otherwise abusing him, thereby contributing to his death.	NG	G, except the word "beating", substituting therefor the word "kicking" and except the words "by forcing him to work", and except the words "and in an unfit physical condition for work and by otherwise abusing him, thereby contributing to his death." Of the excepted words, NG; of the substituted words, G.	Yes
d. Between 1 February 1943 and 19 July 1945, the unlawful mistreatment by one Munehiro aka "Minnie" of Cpl. William T. Knox, British PW, by beating, kicking and otherwise abusing him.	NG	NG	---
e. In about June or July 1944 the unlawful mistreatment by one known as "Minnie" of Pvt. Leslie Hartland, British PW, by beating him, by kicking him and by otherwise abusing him.	NG	G, except the words "and by otherwise abusing him." Of the excepted words, NG	Yes
f. At divers times between 1 February 1943 and 19 July 1945, the unlawful mistreatment and torture by one known as "Minnie" of Pvt. Raymond W. Smith, British PW, by beating him, by forcing him to kneel on his bare knees on a grit covered floor for a long period of time and by otherwise abusing him.	NG	G, except the words "at divers times" substituting therefor the words "on two occasions" and except the words "and torture", and except the words "on his bare knees on a grit covered floor", and except the words "and by otherwise abusing him." Of the excepted words, NG; of the substituted words, G.	Yes
g. Between 1 February 1943 and 19 July 1945, the unlawful mistreatment by one Munehiro, aka "Minnie" of Sgt. Ernest H. Williams a British PW, by striking him on the head with a hammer.	NG	NG	---

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h. In or about March 1945, the unlawful mistreatment by one Munehiro, aka "Minnie" of Lance Cpl. Wilfred Batty, British PW, by beating him, by kicking him, by subjecting him to ju-jitsu and by otherwise abusing him.	NG	G, except the words "by kicking him" and substituting therefor the words "and kicking him" and except the words "by subjecting him to ju-jitsu and by otherwise abusing him." Of the excepted words, NG; of the substituted words, G.	Yes
i. In or about April 1945, the unlawful mistreatment by one Munehiro aka "Minnie" of one Dugdale, British PW, by beating him with a bamboo stick until he was rendered insensible and causing him to become incapacitated for several weeks thereafter.	NG	G, except the words "until he was rendered insensible and causing him to become incapacitated for several weeks thereafter." Of the excepted words, NG.	Yes
j. At divers times between 1 February 1943 and 19 July 1945, the unlawful mistreatment by one known as "Minnie" of numerous Allied PW's by beating, kicking and otherwise abusing them.	NG	NG	---
k. At divers times between December 1942 and 19 July 1945, the unlawful mistreatment and torture by one Fujita of Alfred G. Eastman, British PW, by beating him, by forcing him to kneel across a narrow bench for a long period of time and by otherwise abusing him.	NG	NG	---
l. In or about February 1945, the unlawful mistreatment by one Fujita of Pvt. Arthur C. Tinson, British PW, by beating him, by forcing him to work when ill and in an unfit physical condition for for work and by otherwise abusing him.	NG	NG	---
m. At divers times between 1 December 1942 and 19 July 1945, the unlawful mistreatment and torture by one Fujita of numerous Allied PW's by beating them, by forcing them to kneel on bamboo poles for long periods of time and by otherwise abusing them.	NG	NG	---
n. In or about April or May 1945, the unlawful mistreatment by one Kimura aka "The Owl" of Pvt. Arthur C. Tinson, British PW, by beating him with a pine stick and by otherwise abusing him.	NG	NG	---
o. At divers times between 27 November 1942 and 19 July 1945, the unlawful mistreatment by one Kimura aka "The Owl" of numerous Allied	NG	Nolle Prosequi	---

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PW's by beating and otherwise abusing them.			
p. At divers times between 27 November 1942 and 19 July 1945, the unlawful mistreatment by one Tanaka of Cpl. William H. Hirst and one Wade, British PW's, by beating and otherwise abusing them.	NG	NG	---
q. At divers times between 27 November 1942 and 19 July 1945, the unlawful mistreatment by one known as "The Ape" of numerous British PW's by beating and otherwise abusing them.	NG	NG	---
r. Between 27 November 1942 and 19 July 1945, the unlawful mistreatment by one Kanamaru, aka "Hatchet Face", of Pvt. Robert Ashton Hill, British PW, by beating him, by kicking him in and about his private parts and by otherwise abusing him.	NG	NG	---
s. Between 27 November 1942 and 19 July 1945, the unlawful mistreatment by one Kanamaru, aka "Hatchet Face", of Signalman James J. King, British PW, by beating and otherwise abusing him.	NG	NG	---
t. At divers times between 27 November 1942 and 19 July 1945, the unlawful mistreatment by one known as "The Tiger" of Gunner Robert H. A. Lapsley, Pvt. E. N. Latthews, Pvt. C. N. Matthews and other British PW's by beating and otherwise abusing them.	NG	NG	---
u. In or about October 1944, the unlawful mistreatment by one known as "The Ice Cream Merchant" of Sgt. Leslie C. Millington, British PW, by beating and otherwise abusing him.	NG	NG	---
v. At divers times between 27 November 1942 and 19 July 1945, the unlawful mistreatment of numerous sick, diseased and physically unfit Allied PW's by forcing them to work when physically unfit to perform work and by otherwise abusing them.	NG	NG	---
w. At divers times between 27 November 1942 and 19 July 1945, the unlawful mistreatment of numerous Allied PW's by beating and otherwise abusing them.	NG	Nolle Prosequi	---

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MUNEHIRO:

Ch: Accused, civilian guard serving with the Imperial Japanese Army, at the times and places set forth in the specifications and during a time of war between the United States and Japan, did violate the Laws and Customs of War.	NG	G	Yes
Sp 1: At divers times between 1 February 1945 and 1 September 1945 at 5th Branch PW Camp accused did willfully and unlawfully mistreat and abuse Signalman Albert William Rowe, British PW, by beating and kicking him.	NG	G, except the words "at divers times", substituting therefor the words "on two occasions". Of the excepted words, NG; of the substituted words, G.	Yes
Sp 2: At divers times between 1 February 1943 and 1 September 1945, at 5th Branch PW Camp, accused did willfully and unlawfully mistreat and torture Pvt. Raymond Walter Smith, British PW, by beating him, by forcing him to kneel for a long period of time and by otherwise abusing him.	NG	G, except the words "at divers times", substituting therefor the words "on two occasions", and except the words "and torture", and except the words "and by otherwise abusing him." Of the excepted words, NG; of the substituted words, G.	Yes
Sp 3: At divers times between 1 February 1943 and 1 September 1945 at 5th Branch PW Camp accused did willfully and unlawfully mistreat Pvt. Frederick James Duncan Clemo, British PW, by beating him with fists and otherwise abusing him.	NG	G, except tho words "at divers times" and the words "and otherwise abusing him." Of the excepted words, NG	Yes
Sp 4: Between 1 February 1943 and 1 September 1945 at 5th Branch PW Camp accused did willfully and unlawfully mistreat Pvt. Walter Duffield, British PW, by beating him with fists, by knocking his head against a stone wall and by otherwise abusing him.	NG	G, except the words "by knocking his head against a stone wall and by otherwise abusing him." Of the excepted words, NG	Yes
Sp 5: In or about June or July 1944, at 5th Branch PW Camp accused did willfully and unlawfully mistreat Pvt. Leslie Martland, British PW, by beating, kicking and otherwise abusing him.	NG	G, except the words "kicking and otherwise abusing him", substituting therefor the words "and kicking him." Of the excepted words, NG; of the substituted words, G.	Yes
Sp 6: That in or about April 1945, at 5th Branch PW Camp accused did willfully and unlawfully mistreat Sgt. Ernest Hillas Williams, British PW, by hitting him on the head with a hammer and by otherwise abusing him.	NG	NG	
Sp 7: In or about August 1945, at 5th Branch PW Camp, accused did willfully and unlawfully mistreat	NG	NG	---

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and torture Pvt. Humphrey Cecil Dodwell Knight, British PW, by beating him with a bamboo sword, by forcing him to kneel on the sharp edge of a piece of wood with a pipe behind his knees for a long period of time and by otherwise abusing him.			
Sp 8: In or about September 1944, at 5th Branch PW Camp, accused did willfully and unlawfully mistreat Lance Cpl. Robert Ashton Hill, British PW, by beating and kicking him, by forcing him to work when ill and in an unfit physical condition for work and by otherwise abusing him, thereby contributing to his death.	NG	G, except the words "beating and", and except the words "by forcing him to work", and except the words "and in an unfit physical condition for work and by otherwise abusing him, thereby contributing to his death." Of the excepted words, NG.	Yes
Sp 9: In or about April 1945, at 5th Branch Camp, accused did willfully and unlawfully mistreat one Air Craftsman Dugdale, British PW, by beating him with a bamboo stick while he was in a weakened physical condition until he collapsed, thereby causing him to be incapacitated for a period of several weeks, and by otherwise abusing him.	NG	G, except the words "until he collapsed, thereby causing him to be incapacitated for a period of several weeks, and by otherwise abusing him." Of the excepted words, NG	Yes
Sp 10: Between 1 February 1943 and 1 September 1945, at or near the 5th Branch PW Camp, accused did willfully and unlawfully mistreat and abuse Warrant Officer Harold A. Pritchard, British PW, by beating him with fists.	NG	NG	---
Sp 11: In or about March 1945, at 5th Branch PW Camp, accused did willfully and unlawfully mistreat Leading Air Craftsman Wilfred Batty, British PW, by beating and otherwise abusing him.	NG	G, except the words "otherwise abusing" and substituting therefor the word "kicking". Of the excepted words, NG; of the substituted word, G.	Yes
Sp 12: Between 1 February 1943 and 1 September 1945, at 5th Branch PW Camp, accused did willfully and unlawfully mistreat and abuse Pvt. Robert H. A. Lapsley, British PW, by beating him and forcing him to muster at a time when he was suffering from pneumonia.	NG	NG	
Sp 13: Between 1 February 1943 and and 1 September 1945, at 5th Branch PW Camp, accused did willfully and unlawfully mistreat Cpl. William T. Knox, British PW, by beating, kicking and otherwise abusing him.	NG	NG	
Sp 14: That in or about July 1945, at 5th Branch PW Camp, accused did	NG	NG	---

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willfully and unlawfully mistreat Air Craftsman First Class Albert Edward Leaton, British PW, by beating, kicking and otherwise abusing him.			
Sp 15: Between 1 February 1943 and 1 September 1945 at 5th Branch PW Camp, accused did willfully and unlawfully mistreat one Warrant Officer Kelly, British PW, by beating, kicking and otherwise abusing him.	NG	G, except the words "kicking and otherwise abusing" and substituting therefor the words "and kicking". Of the excepted words; NG; of the substituted words, G.	Yes
Sp 16: Between 1 February 1943 and 1 September 1945, at 5th Branch PW Camp, accused did willfully and unlawfully mistreat numerous Allied PW's by beating them, by forcing them to work when ill and in an unfit physical condition for work and by otherwise abusing them.	NG	NG	---

3. Summary of the Evidence:

a. For the Prosecution:

MUNEHIRO

As to Specification 1: Between 1 February 1945 and 1 September 1945, the accused struck PW Rowe with his closed fist for several minutes and then kicked him after he was knocked down in or near his testicles (Ex. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 29, 45).

As to Specification 2: The accused between 1 February 1943 and 1 September 1945 struck and hit PW Smith in the face with his fists many times (Ex. 15, 44).

As to Specification 3: The accused on numerous occasions slapped and struck PW Clemo in the face with his closed fists (Ex. 8).

As to Specification 4: The accused on one occasion jerked a piece of tape from the finger of PW Duffield. Accused then started beating the PW in the face with his closed fists, knocked him to the ground and then jerked him up and pounded his head against a stone wall (Ex. 20).

As to Specification 5: In or about June or July 1944, the accused struck PW Hartland in the face several times; he tripped the PW and then kicked him in the ribs several times (Ex. 23, 45).

As to Specifications 6 and 7: Not Guilty.

As to Specification 8: The accused ordered all the sick PW's out of their barracks for a formation. PW Hill, who was then suffering from beri-beri and other maladies, was ordered to scrub and clean the Japanese quarters, which required all morning. The PW returned to his bed and was later found by the medical orderlies in a serious condition; requests were made for a doctor, but none was furnished until the PW had died. The accused kicked and struck the PW while he was working in the Japanese quarters (Ex. 2, 3, 4, 5, 7, 9, 13, 17, 18, 19, 20, 21, 22, 24, 26, 27, 29, 31, 33, 36, 38, 39, 44, 45).

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As to Specification 9: The accused struck PW Dugdale unmercifully about the head and shoulders with a large bamboo stick until the PW collapsed and was carried to his quarters. The PW was confined there for several weeks (Ex. 17).

As to Specification 10: Not Guilty.

As to Specification 11: The accused struck and beat PW Batty with his fists and then threw the PW to the ground and severely kicked him in the back (Ex. 2, 3, 4, 11, 16, 23).

As to Specifications 12, 13, and 14: Not Guilty.

As to Specification 15: The accused beat and struck PW Kelly with a bamboo pole, knocking him to the ground and then kicking the PW in the testicles (Ex. 7).

As to Specification 16: Not Guilty.

NOMOTO:

As to Specification 1: The accused forced PW Hurst to kneel in a cell where he was confined from 5:15 PM to midnight each day for about a period of five days (Ex. 2). The accused was identified as the camp commander from 27 November 1942 to 19 July 1945. He would slip up on the prisoners of war at the shipyard while they were resting. When they failed to salute him he immediately started hitting those who had failed to salute (Ex. 3). PW Clemo was slapped by the accused because he was talking to a Japanese working at the shipyard (Ex. 8). PW Salter was forced to kneel and the accused then ordered one of the Japanese guards to hit him three times on the side of the face (Ex. 14). The accused struck four PW's with his scabbard because they were talking (Ex. 27). Accused Munehiro testified that the accused Nomoto directed him to beat prisoners of war on four different occasions (R. 282).

As to Specifications 2, 3, and 4: Not Guilty.

As to Specification 5-a: (See Specification 1, Munehiro. The summary of evidence therein applies to this specification.)

As to Specification 5-b: (See Specification 3, Munehiro. The summary of evidence therein applies to this specification.)

As to Specification 5-c: (See Specification 8, Munehiro. The summary of evidence therein applies to this specification.)

As to Specification 5-d: Not Guilty.

As to Specification 5-e: (See Specification 5, Munehiro. The summary of evidence therein applies to this specification.)

As to Specification 5-f: (See Specification 2, Munehiro. The summary of evidence therein applies to this specification.)

As to Specification 5-g: Not Guilty.

As to Specification 5-h: (See Specification 11, Munehiro. The summary of evidence therein applies to this specification.)

As to Specifications 5-i, 5-j, 5-k, 5-l, 5-m, and 5-n: Not Guilty.

As to Specification 5-o: Nolle Prosequi.

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As to Specifications 5-p, 5-q, 5-r, 5-s, 5-t, 5-u, and 5-v: Not Guilty.

As to Specification 5-w: Nolle Prosequi.

b. For the Defense:

The accused Nomoto, having been by the Commission properly and duly advised and warned of his rights as a witness, elected to be sworn and to testify in his own behalf (R. 311). He stated that he received only one complaint that prisoners of war had been mistreated. He immediately reported this to the company and the person who committed the offense was discharged (R. 346, 347, 348, 556). The accused denied that he punished PW Hurst (R. 349). Accused stated that he never personally forced or ordered any PW to kneel while confined in the guard house (R. 349, 351), or that he ever at any time forced or ordered sick PW's out of their beds for work details, or that he ever ordered sick PW's to work, or that he at any time had them assist in hauling fishing nets out of the water (R. 352). A small number of PW's who were classified as "light duty" did do some work in the garden. He did not approve or allow PW's to work overtime at the iron works (R. 355). On one occasion the accused caught a PW and a Japanese worker talking together after he had warned them not to do so. He slapped both the PW and the Japanese worker (R. 357). He did not slap or order anyone to slap or strike with their fist PW Salter, or order him to kneel on gravel because he had cheered during an air raid (R. 357). He never at any time ordered any of his subordinates to punish PW's, but to the contrary he had orally advised his subordinates that they must not strike PW's or have them do unreasonable things (R. 358). The accused did admit that he punished PW Salter because the PW had stolen some figs, and that he made him kneel for about one hour in the guard room upon the floor (R. 358). The accused denied that Kimura beat certain PW's while he was present (R. 358). The accused stated that he knew nothing about PW Hill working in the Japanese quarters or that he was ordered to work, but did learn later of his death (R. 360). He at no time struck four prisoners of war with his sword (R. 363). He was not informed and did not know anything about the slappings and punishment referred to in Exhibit 41, the statement of PW Warrington, and at no time was he advised concerning it (R. 375). During his tour as camp commander he never beat or mistreated any PW, but he did order the accused Munehiro to punish Smith for making and possessing a lamp and he struck or slapped a PW at the shipyards for smoking (R. 375, 376, 377).

The accused Munehiro, having been by the Commission duly warned and advised of his rights as a witness, elected to be sworn and to testify as a witness in his own behalf (R. 249). The accused identified Nomoto as his superior and as the commander of the camp. The camp was originally a branch camp until 1 December 1943 when it became a dispatch camp and at which time the company took it over. He was in charge of the kitchen and the distribution of food to the PW's (R. 251, 252). Accused served as officer of the day every third day. His duties were to take the morning roll call and receive the medical report from the PW medical orderlies, and to deliver the prisoners of war for work to the guard detail. He also inspected the barracks and received the PW's on their return from work. On no occasion did he change the medical orderlies' classification of the sick PW's (R. 252, 253, 254). PW Hill was classified for "light duty". The accused requested a detail, and the medical orderly assigned PW Hill to clean up the Japanese quarters. During his inspection the accused found PW Hill playing with a clock which he had broken and he kicked him on the leg (R. 269). PW Hill left and went to the kitchen where accused saw him playing around. No report or complaint was made by PW Hill that he was suffering or too

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sick to work (R. 270). Two days later the accused saw PW Hill asleep in his room but did not hear him cough or complain and about two days later he was advised that PW Hill had died (R. 271). The accused kicked PW Rowe because the PW refused to put his shoe on and demonstrated an attitude of resistance toward the accused (R. 271, 272). PW Smith had a lamp lighter in his possession, and for this the accused ordered the PW to kneel on the floor of his office as punishment. He never struck this PW on any occasion (R. 275). Accused testified that he punished PW Clemo by striking him with his fist as punishment for stealing some articles from the company (R. 275, 276). He also admitted that he struck PW Duffield with his fist but that he did not strike his head against a stone wall. This punishment was given the PW because he had stolen from the company (R. 276). He did not remember PW Martland by name but, on one occasion a PW was chewing some rice, and upon being asked what he was chewing, he answered it was gum. For this lie, the accused struck him, tripped him to the ground, and then kicked him (R. 277). PW Dugdale was absent from roll call and accused later found him coming from the latrine. The accused asked him what was the matter and pushed him on his chest. The PW fell backwards on his buttocks and accused then kicked him four times and struck him over the shoulders with a bamboo sword (R. 278, 279). PW Batty, during roll call, went to the latrine where the accused saw him in the corridor. He struck the PW and kicked him, but he believes that this is the same incident as referred to above. He did not strike the PW with his bayonet (R. 279, 280). He never struck PW Kelly. He did not recall the incident. He knew that he did not strike him with his sword, a saber, or a stick (R. 281, 282). On some occasions he reported some of these punishments to the camp commander (Nomoto) (R. 282).

Haruyo Nakamura, civilian Japanese doctor, testified that the company assigned him to the camp; that he at one time examined PW Hill and classified him for "light duty" within the camp, but that he did not discover any symptoms of pneumonia. After the PW's death he examined the body. The PW had died from acute pneumonia (R. 88, 89, 91, 92, 113).

Ecishi Koichi, a Japanese medical officer, testified that he examined the PW's at the camp, and that Nomoto, who was camp commander, never changed any of his classifications that he knew of (R. 114, 115). Kicking a PW on the leg and having him scrub the floors would not cause pneumonia or be a reason for his death (R. 119, 120). Scrubbing floors by a PW patient suffering with beriberi would not be detrimental to a PW's health (R. 122).

Mitsuyoshi Fujita testified that he was employed by the company as a clerk, but was generally used as interpreter (R. 158). The accused Nomoto did not have authority to discipline the civilian company employees, but could report them for any violation or irregularities. On one occasion Nomoto reported one civilian guard who was later discharged (R. 161). He heard the accused Nomoto advise the guards that they should not strike or abuse PW's (R. 174). The accused Munehiro was an earnst worker and an intelligent person (R. 175).

Hiroshi Tamura, a former Lieutenant General, testified that he was the Chief of the Prisoner of War Information Bureau and Chief of the Prisoner of War Administration Division of the War Ministry (R. 191). The witness explained the position of a camp commander of a branch camp and that of a dispatch camp commander. A commander at a dispatch camp had no authority or responsibility but that a branch camp commander had both authority and responsibility (R. 192, 193).

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4. Errors and Irregularities:

a. There are no errors or irregularities appearing in the record of trial which injuriously affect any substantial rights of either of the accused. The record of trial discloses that the trial was held without partiality, and adequate opportunity was given to each of the accused to present any matter in his individual defense that he might desire. The accused were ably represented by counsel and each accused fully cooperated in his defense. There is no evidence that either of the accused were insane or otherwise incompetent at the time of the alleged commission of the offenses or at the time of the trial. Insanity was not an issue.

b. There have been no questions raised in the record that were not decided by the Commission upon the hearing of the evidence presented. Two-thirds of the members of the Commission present at the time the findings were arrived at and the sentence imposed, concurred in the result.

c. The various objections and motions which were made during the trial were ruled upon by the Law Member of the Commission and his rulings thereon cannot be said to be prejudicial to the rights of either of the accused. There is sufficient legal evidence in the record of trial which in itself supports the findings of the Commission in view of the compelling evidence of guilt properly in evidence, which is of such quality and quantity as practically to compel in the minds of conscientious and reasonable men the findings of guilty.

b. The errors and irregularities appearing in the record of trial and the alleged errors called to the attention of the Reviewing Authority in defense counsel's motion and brief filed herein are not deemed prejudicial to either of the accused. There appear to be no mitigating circumstances and no justification for the crimes committed by the accused as alleged in the specifications upon which each accused was separately found guilty.

e. Hearsay and opinion evidence were objected to in numerous instances throughout the trial. All these objections were properly overruled since such evidence may be admitted under Paragraph 5 (d)(1), SCAP Regulations Governing Trial of Accused War Criminals, 5 December 1945, provided only that it be relevant and of some probative value. The regulations cited are legal and conform to the established practice in trials by military commissions (Application of Yamashita, 66 S. Ct., 342; and Ex Parte Quirin; 371, U.S. 163, S. Ct. 2; Fairman, The Law of Martial Rule, 276, 277; Case Docket No. 124 (Kato); No. 37 (Fukaui); No. 39 (Hirata); No. 68 Narikawa).

f. The accused, through their defense counsel, objected to the admission into evidence of affidavits and statements by former prisoners of war who were interned at the camp. Such evidence is expressly admissible under Paragraph 5 (d)(1), SCAP Regulations Governing Trials of Accused War Criminals, 5 December 1945. This portion of SCAP regulations is legal and conforms with the established practice in trials by military commissions as cited above.

5. Opinion:

a. The record is legally sufficient to sustain the findings of the Commission and the sentences imposed (R. 436-439).

b. The Charge and specifications of which each accused was found guilty allege violations of the Laws and Customs of War committed on the dates alleged by the accused who were enemy nationals

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against members of the British Armed Forces at a time when a state of war existed between the United States and its Allies and Japan. Accordingly, the Commission which was appointed to hear the case had jurisdiction of each of the accused and the subject matter under SCAP Regulations (AG 000.5 (5 Dec 45), Subject: The Trials of Accused War Criminals, and amendments thereto, as established by the Supreme Commander for the Allied Powers. The Commission was constituted by proper authority and had jurisdiction of both the accused and the offenses (Case Docket No. 55, Murakami, et al.

c. The camp commander (Nomoto) had a duty to protect the prisoners of war under his command and, by the use of diligence, he must determine that they are not being mistreated. If he should know, and by his negligence does not know, he has committed an offense. The question of command responsibility has been passed upon by this Headquarters in numerous reviews and it has been held that the camp commander does have certain responsibilities and that he must take affirmative measures within his power and appropriate under the circumstances to protect the prisoners of war. From the evidence herein it appears that the accused Nomoto did fail to take necessary measures to discharge the duty imposed upon him to control the conduct of his subordinate Munehiro (Case Docket No. 39, Hirata; No. 55, Murakami, et al). The Charge and specifications against accused Nomoto are that he failed to discharge his duty as camp commander to control the behavior of his subordinate and permitted him to commit brutal atrocities against British prisoners of war confined within the camp under his custody.

d. The provisions of the Rules of Land Warfare plainly imposed upon the accused as camp commander an affirmative duty to take such measures as were within his power and appropriate under the circumstances to protect the prisoners of war. From the evidence it appears that the accused failed to take measures necessary to discharge the duty imposed upon him to control the conduct of his subordinate Munehiro, and the evidence sufficiently supports the findings that Munehiro did commit the offenses as charged (Yamashita, 66, S. Ct. 340, pp. 345, 349).

e. Together with the other letters for clemency filed in this case, careful reading and consideration has been given to the letter recommending clemency copied in the defense brief, to which letter there was attached a complete analysis of what the evidence disclosed, as reviewed by the Law Member of this Commission, reflecting his point of view as the result of his participation on the Commission. Two-thirds of the members of the Commission who were present at the time the findings and sentence were arrived at concurre in the result. The Commission as trier of the facts was in a position to judge the sufficiency of the evidence before it as to whether the accused Nomoto failed to discharge his duty as camp commander. Its findings based upon the forty-three affidavits of POW's who were at the time of the commission of the offenses alleged, confined in the camp and personally knew of the then existing conditions, should not be disturbed on review.

6. Recommendations:

a. The Charge and specifications against each of the accused of which they were found guilty, herein allege violations of the laws of war and were fully supported by the evidence. The trial was fair and just. The sentence of the Commission is legal and is not considered excessive for the crimes for which each accused was convicted.

b. There was filed a letter for clemency as to each accused from the Law Member of the Commission, reference to which has been

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made hereinabove. There were other letters of clemency filed by various friends of the accused, but the requests for clemency do not suggest any newly discovered evidence on their behalf. The evidence as narrated by the Law Member in his letter for clemency had been considered by the Commission and, the other letters had they been considered by the Commission would not justify any change in the findings or sentence. The letters do not disclose any mitigating circumstances or justification for the crimes committed. The defense has filed a motion and brief on behalf of the two accused asking the Reviewing Authority to modify and reduce the sentences imposed. The Reviewing Authority has been informed that the prosecution will not file a reply brief in this case (Major Goodman). It is therefore recommended that the motion as to each of the accused be denied.

c. It is therefore recommended that the sentences as to each accused be approved. In compliance with the established policy owing to the length of time each accused has spent in confinement prior to the date of sentence it is recommended that they be given credit for the length of time designated, viz:

Akiro Nomoto (confined 26 November 1945): The unserved portion of his confinement.

Genichi Munehiro (confined 10 December 1946); four and one-half (4½) months.

d. It is recommended that Sugamo Prison, Tokyo, Honshu, Japan is the appropriate place of confinement of each accused.

7. Action:

Attached hereto are forms of action designed to carry into effect the above recommendations, should they meet with your approval.

GEORGE R. TAYLOR
Reviewer
Judge Advocate Section

I concur in general. It is believed that the sentence in each instance is quite inadequate for the multiple offenses established notwithstanding all mitigating circumstances. Nevertheless, pre-trial confinement is in no way to be considered as confinement served in expiation for offenses of which an accused is later convicted. Therefore a reviewing authority should consider such restraint entirely separately from that adjudged by a commission. The blackest rogue is entitled to an early trial under the enlightened rules of civilized nations. When trials are postponed, as this one was, because of the great number of those awaiting justice, fair allowances should be made for undue pre-trial confinement regardless of the inadequacy of a sentence. This is all the more true since commissions are instructed that pre-trial confinement is not to be considered in adjudging sentences.

ALLAN R. BROWNE
Lt Col JAGD
Army Judge Advocate

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